



Yellowstone County Zoning Commission Minutes for the Meeting of November 8, 2004

The County Zoning Commission met on Monday, November 8, 2004 in room 403A, 4th floor of the Yellowstone County Courthouse.

Oscar Heinrich, Chairman, called the meeting to order at 4:00 p.m.

Commissioners and Staff		1/12/04	2/9/04	3/8/04	4/12/04	5/10/04	6/14/04	7/12/04	8/9/04	9/13/04	10/12/04	11/8/04	12/13/04
Oscar Heinrich	Chairman	1	CANCELED	1	1	CANCELED	1	1	CANCELED	1	1	1	
Jerome Musselman	Vice-Chair	1		1	1		-	1		1	1	1	
Chuck Hensley	Commissioner	E		1	E		V	V		V	*	*	*
Al Littler	Commissioner	1		1	1		1	1		1	1	1	
Joan Hurdle	Commissioner	1		1	1		1	1		1	1	1	
Dennis Cook	Commissioner	-		-	-		-	-		-	1	1	

Chairman Heinrich introduced the County Zoning Commission members and staff in attendance:

Nicole Cromwell, Planner II/Zoning Coordinator
Karen Miller, Planning Clerk
Wyeth Friday, Planner I

ANNOUNCEMENTS:

Chairman Heinrich read the following announcements:

offices will be closed on November 2, 2004 in observation of Elections Day,
November 11, 2004 in observation of Veteran's Day, and
November 25, 2004 in observation of Thanksgiving Day.
County Zoning Commission Meeting December 6, 2004.

PUBLIC COMMENT

There were none.

Approval of Minutes:

There were no minutes for approval.

Public Hearings:

Chairman Heinrich reviewed the rules for the procedure by which the public hearings will be conducted. He said the applications heard at this meeting would be forwarded to the BOCC at their meeting of November 23, 2004.

Item #1 Zone Change #575:

Ms. Cromwell read the legal description and asked Wyeth Friday to present the zone change application.

Mr. Friday read the legal description and reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the existing surrounding properties while explaining the existing zoning surrounding the subject property. He said staff is forwarding a recommendation of approval. He explained the reasons for the staff decision.

REQUEST

This is a zone change request from Agricultural Open Space to Residential-9600 on approximately 40 acres southeast of the intersection of El Paso Street and La Paz Drive in Lockwood.

APPLICATION DATA

OWNER:	David Smith
LEGAL DESCRIPTION:	NW1/4 SW1/4, Section 29, T1N, R27E
ADDRESS:	Southeast of the intersection of El Paso Street and La Paz Drive in Lockwood
CURRENT ZONING:	Agricultural Open Space
PROPOSED ZONING:	Residential-9600
EXISTING LAND USE:	Vacant, dry range land
PROPOSED LAND USE:	Large-lot, single-family development
SIZE OF PARCEL:	Approximately 40 acres

APPLICABLE ZONING HISTORY

Zone Change #422: November 26, 1991. Change from Agricultural Open Space to Agricultural Suburban on Tracts 1-A, a-B, Certificate of Survey No. 1884 (This property is just to the east of the subject property).

CONCURRENT APPLICATIONS

Preliminary Major Subdivision Plat Application for Sierra Estates 3rd Filing

Discussion:

Commissioner Littler asked if Ford Road would qualify for the SID program for arterial streets.

Mr. Friday said that the SID program does not include County roads. He explained the program briefly.

Commissioner Hurdle asked for clarification as to what the approval of the zone change would allow for future development of the subject property. She was concerned that the proposed zone change would not be legal under the laws governing land use. She was not clear as to the reasons for proposing the improvement plan for Ford Road.

Mr. Friday said that the Urban Transportation Plan is for the entire Billings area which includes Ford Road as part of that plan. He explained that the plan is for Ford Road to eventually be an arterial road.

Commissioner Hurdle asked if there is a plan for drainage.

Mr. Friday said there is a drainage plan included with the development.

Commissioner Hurdle asked if the drainage was included in the platting of the development or for future development plans.

Mr. Friday reviewed the proposed plans and said that it is included in the subdivision plans.

Chairman Heinrich asked for clarification of the restriction on R-9600 and the allowances under that designation for septic systems.

Mr. Friday reviewed the specific requirements for the septic allowances until a sewer system is in place. He reviewed the development and explained the lot density.

Commissioner Cook asked for clarification of the letter received from the Public Works Department regarding the development of Ford Road.

Mr. Friday explained that the developer could be required to pave Ford Road 3000' out from the subdivision to Johnson Lane. He said that could be an inequitable requirement because there are other properties between that and Johnson Lane that are going to benefit from the paving and were not required to pay for it. He said the problem is that there is no mechanism in place in the county to allocate funds for future improvements to specific roads impacted by development projects. The BOCC is in the process of reviewing procedures to allow for those upgrades. The County Public Works Department has concerns about the development of the roads outside the city limits, however there currently is not a way to implement the requirements for existing roads.

Chairman Heinrich clarified that the road development would take place in the platting process.

Mr. Friday said road development is a requirement during the subdivision process.

Commissioner Hurdle asked if the plats were being examined by the Planning Board without the DEQ evaluation.

Mr. Friday explained that the Planning Board reviews the plats at preliminary stage. The standard requirement for final platting is an approval letter from DEQ.

Commissioner Hurdle asked if the developers for this project were present at the BOCC discussion session (on Monday, November 8).

Mr. Friday said they were present during the discussion. He said that although the Commissioners met in a discussion session it was still a public forum and the applicants as well as any member of the public are allowed to be present.

Chairman Heinrich asked if there was anyone in attendance wishing to speak in favor of or in opposition to Zone Change #575.

The public hearing was opened at 4:26 p.m.

Applicant:

Mack Fogelson, Engineering Incorporated, said he was representing the property owner as well as the developer. He reviewed the platting on the property. They are attempting to make the entire subdivision the same zoning. He explained that the north half of the property was zoned as residential. They are attempting to make the south half of the property the same type of zoning.

Commissioner Littler said he was concerned with Ford Road and access to and from the subdivision. Those things will be reviewed during the subdivision review process.

Commissioner Hurdle asked if the planning required any walkways.

Mr. Fogelson said that will be reviewed as part of the platting subdivision.

Chairman Heinrich clarified that the question regarding walkways would be concerning the best interest of the general health and welfare of the public.

Mr. Fogelson reviewed the area of the subdivision that would include a walkway that would potentially interlink with the City's bike path. The Park Board had requested some inclusion of trails and walkways with the project.

Chairman Heinrich asked if there was anyone else in attendance wishing to speak in favor of or in opposition to Zone Change #575.

There were none.

The public hearing was closed at 4:32 p.m.

Discussion:

Commissioner Hurdle said she felt that there were other alternative sites to review for this type of high density. She felt that we should be looking at the overall picture. She indicated that the developers had ex parte communication with the Board of County Commissioners. She felt that the entire development was inappropriate.

Chairman Heinrich asked if she was opposed to any development in that location.

Commissioner Hurdle said she felt that this specific development was not right for this property. She said it is currently open space and felt that it's most valuable use is open space. The Growth Policy states clearly neighborhood transportation should be provided by the local planning group. She indicated that preferred land use patterns should be addressed. She felt that this project would be considered urban sprawl and that is what needs to be prevented. She said she felt that the Growth Policy clearly says that the neighborhood plan should be taken into consideration when developing. She said the project is in favor of the developers rather than the general welfare. She was concerned with the effect of developments on the police and fire response as well as the effect on children and schools.

Chairman Heinrich said that there were no negative comments received from any of those departments to support claims of impact on their services.

Commissioner Littler reviewed the development of the area in the City of Billings. The area in Lockwood that is presented is not really good for anything. He said in time Lockwood would likely be annexed into the city.

Commissioner Hurdle said that if the sewer is developed it would be appropriate.

Commissioner Littler said utilizing the land that is closer to town is better than moving further to the outer areas.

Chairman Heinrich said that the restriction with no sewer is the larger lots.

Vice-Chair Musselman said that if the EPA would be appropriate.

Commissioner Hurdle said she would not want to be down stream from the 88 new septic systems. She said that the ground water in the area is not that good anyway.

Motion:

On a motion by Commissioner Littler and seconded by Commissioner Cook, and passed by a 4-1 voice vote, with Commissioner Hurdle voting against the motion, a recommendation for approval of Zone Change #575 will be forwarded to the BOCC at their meeting of November 23, 2004.

Item #2 Zone Change #576

Ms. Cromwell read the legal description and reviewed the staff report. She pointed out the property location on the overhead projector for the audience and reviewed the existing surrounding properties while explaining the existing zoning surrounding the subject property. She said staff is forwarding a recommendation of approval. She explained the reasons for the staff decision.

REQUEST

A zone change request from Residential 9600 and Residential Manufactured Home to Community Commercial on a portion of unplatted land in the SW1/4, SE1/4, NW1/4 of T.1N, R.26E, Section 11 (3.8 acres) and on C/S 216 and C/S 371 (2.2 acres). The property is the location of the former Zentz Lumber business.

APPLICATION DATA

OWNERS:	Larry Kaufman
AGENTS:	Engineering, Inc.
LEGAL DESCRIPTION:	C/S 216, C/S 371 (Tract 2A) and 3.8 acres of an unplatted portion of Section 11 in T.1N R. 26E. A total of 6 acres of the 12.2 acres
ADDRESS:	2732 Highway 312
CURRENT ZONING:	Residential Manufactured Home and R9600
PROPOSED ZONING:	Community Commercial
EXISTING LAND USE:	Single family home on C/S 216 and former Zentz Lumber offices and storage buildings on unplatted land
SIZE OF PARCEL:	6 acres to be re-zoned, 6.2 acres to remain R9600

Discussion:

Commissioner Hurdle asked what the speed limit is for that area of 312.

Ms. Cromwell said that the speed limit had recently been reduced from 65 to 50 in that area.

Chairman Heinrich asked if there was anyone in attendance wishing to speak in favor of or in opposition to Zone Change #576.

The public hearing was opened at 4:54 p.m.

Applicant:

Mack Fogelson, Engineering Incorporated, presented an overview of the property with the existing buildings on site. They would like to utilize the existing buildings for a mini storage. The reason they are doing a boundary line relocation was to provide a buffer to the adjacent residential properties. He said the current status of Highway 312 is that it will be widened to a 5 lane traffic road. He said staff's review of the existing access is accurate. The proposed road widening would provide better site distance for ingress and egress.

Commissioner Littler asked what the approximate distance was from the north edge to the buffer area.

Mr. Fogelson said it was not quite 200 feet.

Commissioner Littler asked if that area would then remain Residential 9600.

Commissioner Cook asked for clarification regarding the access locations.

Mr. Fogelson said the second access is new. He said DOT requires access for each piece of property.

Opponents:

John Sott, 2817 Saratoga Trail, asked if the plan includes other access points. He was concerned with the excess use of the resident maintained roadways in their neighborhood.

Rebuttal:

Mr. Fogelson said that although the access is not part of the zone change, he explained that the access would not be changed for this application. If there were to be a future development or subdivision there might be an additional access but he did not have information on that access. He explained the process for the subdivision access and road maintenance district.

Debbie Sott, 2817 Saratoga explained that the residents on Saratoga have to maintain their own road. She was concerned with the maintenance of that road. She said if the future use would impose an SID they should not have to pay for that in addition to the existing expense they already have incurred for current maintenance.

Mr. Fogelson reiterated that the road maintenance is not part of the zone change. He reviewed the access that would be cleared up with the new widening.

Chairman Heinrich asked if there was anyone else in attendance wishing to speak in favor of or in opposition to Zone Change #576.

There were none.

The public hearing was closed at 5:09 p.m.

Discussion:

Ms. Cromwell clarified the access and setback regulations and screening that would apply to this property with future expansion.

Mr. Kaufman commented on the property ownership. He reviewed the proposed use that would utilize the existing buildings. The adjacent property “the “L” shaped property and said he felt that it would not be in the best interest of the property owner to subdivide as a residential use because it would increase the traffic for that access.

Commissioner Hurdle asked if there are signs existing and what would change if this were approved.

Ms. Cromwell said if it is zoned commercial they would be allowed to construct the type of signage that is allowed in that zoning district.

Commissioner Littler asked staff if the recommendation was made for denial because staff felt that the 200 feet of existing buffer would not be adequate from the residentially zoned area.

Ms. Cromwell said that she did not feel that it was adequate for that use. If the use is changed there could be other types of uses that would meet the restraints of the property there are other commercial uses that would affect those lots in the future. The future residential use of those lots could be affected by a different type of business than is proposed.

Commissioner Littler indicated that there was not a commercial push to put a different type of use in that location. He expressed concern with the current residents, but felt that the zone change would not adversely affect the area.

Commissioner Hurdle asked how long the driveway was.

Mr. Fogelson said it was about 350 feet.

Mr. Kaufman said the entrance would be moved further from the existing bridge.

Commissioner Littler said he felt that the property did not have much benefit as a commercial use. He said that he felt that this would be acceptable as a highest and best use for the property. He did not feel that there would be many other uses that would be profitable in that location.

Commissioner Hurdle reiterated that she felt that putting a commercial zoning on that property would instigate an allowance for a type of business that would not be a good fit for that area.

Chairman Heinrich asked how far the Heights Water District was from the subject property.

Ms. Cromwell pointed out the closest connection to the water district and said that they would not be able to hook into that service unless they were annexed into the city.

Commissioner Hurdle asked if there was any ratio of the commercial zoning as opposed to the residential in the county.

Ms. Cromwell said there had been a study during the Growth Policy on the land existing use for those properties.

Commissioner Hurdle asked if there was a shortage of commercial property.

Ms. Cromwell said there is sufficient commercial property.

Commissioner Cook stated (as part of the Shepherd planning group) they had researched the 312 area and the discussion in that planning group was that they would prefer the commercial area along Highway 312. He indicated that it was the natural trend. He said he felt that commercial development would probably tend to be along Highway 312 and that it would be the proper place for it if it is done appropriately. He said he felt that the upgrades in progress on the highway were needed.

There was discussion regarding the possibility of future use of the property.

Motion:

A motion was made by Commissioner Hurdle and seconded by Chairman Heinrich to forward a recommendation of denial the vote was 2-3 with Commissioner Littler, Commissioner Cook and Vice-Chair Musselman voting against the motion;

A motion was made by Commissioner Littler to approve Zone Change #576, it was seconded by Commissioner Cook and passed by a 3-2 voice vote, with Chairman Heinrich and Commissioner Hurdle voting against the motion, a recommendation for approval will be forwarded to the BOCC at their meeting of November 23, 2004.

Chairman Heinrich asked the Commissioner Littler to explain the reason for not forwarding staff recommendation for the record.

Ms. Cromwell reviewed the reasons she received from their discussion.

Commissioner Littler confirmed the reasons as staff reviewed the criteria.

Commissioner Hurdle asked for clarification of what Commissioner Littler referred to when commenting on a properties highest and best use means.

Commissioner Littler explained that it means that it is the right of the property owner to be able to utilize the property for what it could be used for.

Commissioner Hurdle asked if that meant the best use so the property owner can make the most money.

Commissioner Littler said he felt that it was a property owner's legal right to use their property for what it is best suited for.

Other Business:

Chairman Heinrich asked if the Commissioners had any recommended changes to the bylaws.

Commissioner Hurdle said on page three (3) the reference to the Comprehensive Plan needs to be changed to Growth Policy.

Chairman Heinrich referred to 11(f) which states that the Commission does not have to render a decision on the day of the meeting but must render a decision within 10 days of the meeting and asked that staff to forward the bylaws to the legal department for review. He also asked to have them review the restrictions with regard to if there is a tie vote/no vote or no action.

Ms. Cromwell said that there are some restrictions that are covered in the Zoning Code or State Law that do not have to be restated in the bylaws. She said that staff would forward the Commission's questions to the County Legal Department for review of the bylaws.

Chairman Heinrich reviewed the bylaws section relative to when a Commissioner can abstain from voting on any item. He said he would like the legal department to review item #15 also.

Commissioner Hurdle expressed concern with the 12 criteria.

Chairman Heinrich said that the 12 criteria are separate from the bylaws. He said the 12 criteria are the guidelines that are followed from the Zoning Code.

Commissioner Hurdle said #14 of the bylaws states that we must abide by State Laws. She said she would like a better understanding of why we are required to use the 12 criteria. She requested that staff review the 12 criteria as it pertains to the zoning code. She said would like staff to review and clarify the history of the 12 criteria.

Chairman Heinrich reiterated that the bylaws are the guidelines that must be followed for procedure and part of that is following the appropriate State Laws the Zoning Code.

Ms. Cromwell said she would review the proposed changes and forward the bylaws to the Legal Department for review at the regular scheduled meeting in February, 2005.

Adjournment:

The meeting was adjourned at 5:57 p.m.

Oscar Chairman Heinrich, Chairman

ATTEST:

Karen Miller, Planning Clerk